

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition for Waiver	)	
Filed on Behalf of	)	
Pennsylvania and South Dakota Applicants	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: April 13 , 2005****Released: April 13 , 2005**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Petition for Waiver filed by the Pennsylvania and South Dakota State Departments of Education on behalf of Pennsylvania and South Dakota applicants (collectively, Petitioners).<sup>1</sup> The Petition seeks a waiver of the 60-day deadline for filing appeals of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to the Commission so that Petitioners may file appeals to benefit from the recent Order granting the appeal of Iroquois West School District 10 (*Iroquois Order*).<sup>2</sup> Consistent with precedent, we deny the Petition for Waiver.

2. Petitioners assert that 118 funding requests by applicants in their states were improperly denied by SLD for the same reason that was found invalid in the *Iroquois Order*.<sup>3</sup> Although Petitioners did not file appeals of the adverse SLD decisions and the sixty day deadline for such appeals<sup>4</sup> has long passed, they seek a waiver to file their appeals beyond the deadline. A representative for affected applicants from Ohio supports their petition.<sup>5</sup>

3. We deny the Petition for Waiver. We note that a waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the rule.<sup>6</sup> We find that the Petitioners have not demonstrated special circumstances to warrant a waiver. The Commission has strictly and consistently enforced filing

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<sup>1</sup>Joint Petition of Pennsylvania Department of Education and South Dakota Department of Education for Waiver and Relief, CC Docket No. 02-6, filed January 24, 2005 (Petition for Waiver).

<sup>2</sup>*Request for Review of Iroquois West School District 10, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-343292, CC Docket 02-6, Order, DA 05-54, released January 11, 2005 (*Iroquois Order*).

<sup>3</sup>Petition for Waiver at 4, Appendix B (104 applicants from Pennsylvania and 14 applicants from South Dakota).

<sup>4</sup>47 C.F.R. § 54.720.

<sup>5</sup>Letter from Daniel Farslow, Ohio State E-Rate Coordinator, dated January 28, 2005.

<sup>6</sup>47 C.F.R. § 1.3. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

deadlines, allowing waivers of deadlines only in very limited and compelling situations.<sup>7</sup> In light of the large number of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures, including filing deadlines for appeals.<sup>8</sup> Petitioners contend that they did not file timely appeals because SLD's decisions were worded definitively and, therefore, they were convinced that an appeal would be hopeless. Petitioners claim that their misunderstanding about the basis for the denial of funding appears to have been shared by many others.

4. We find, however, that Petitioners had more than adequate opportunity and notice of their right to appeal. SLD's funding commitment decision letters provide clear and detailed instructions to applicants about their rights and procedures for appealing SLD decisions. Furthermore, although Petitioners claim that they were confused about SLD's rationale for denying funding, they acknowledge that "E-rate coordinators asked the SLD for an explanation of the manner in which the SLD was applying the [policy at issue]," and that "[i]n response to the SLD's policy change, some, but not all, adversely affected applicants filed appeals with the SLD and/or the FCC . . . Indeed, according to the SLD's own data, . . . approximately 15% of [Funding Year 2003 appeals filed with SLD] were on the basis of the [policy at issue]."<sup>9</sup> Petitioners offer no explanation for why they should be excused from observing the appeals deadline when hundreds of other applicants were able to appeal on time. In keeping with our prior decisions, we determine here that Petitioners have not demonstrated the special circumstances necessary for a waiver of our rules.

5. Accordingly, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Joint Petition for Waiver and Relief, filed by Pennsylvania Department of Education and South Dakota Department of Education, on January 24, 2005, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>7</sup>See, e.g., *Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879, 15880-81, paras. 4-5 (Acc. Pol. Div. 2001); *Petitions for Waiver or Reconsideration of Sections 54.706, 54.709, and/or 54.711 of the Commission's Rules, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Seventeenth Order on Reconsideration, 15 FCC Rcd 20769, 20783, para 28 (1999).

<sup>8</sup>See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612-13, para. 8 (Com. Car. Bur. 2000) ("In light of the thousands of applications that SLD reviews and process each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

<sup>9</sup>Petition for Waiver at 3.